



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

DECISION

MRA-32/49095

PRELIMINARY RECITALS

Pursuant to a petition filed May 1, 2001, under WI Stat § 49.45(5) and WI Admin Code § HA 3.03(1), to review a decision by the La Crosse County Dept. of Human Services in regards to Medical Assistance (MA), a hearing was held on June 21, 2001, at Lacrosse, Wisconsin.

The issue for determination is whether the community spouse's income allocation may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Carmen Mashak, ESS
Ellie Gaustad, ESS I
La Crosse County Dept Of Human Services
300 N. 4th Street
PO Box 4002
Lacrosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 392-50-5143, CARES #4109240247) is an institutionalized resident of La Crosse County; she became institutionalized on March 16, 2001; requested Institutional – MA in May, 2001; and was subsequently determined eligible for such MA.
2. The petitioner was required to make a cost of care contribution of \$40 in May, 2001; \$829.94 in June, 2001; and \$824.94 for July, 2001.

3. The petitioner's individual monthly gross unearned income is approximately \$903.11; her community spouse's gross earned income is \$1,901.83 per month.
4. Effective June, 2001, the county agency allowed a community spouse income allocation to the petitioner's husband of \$33.17; when added to his usual monthly gross income, his gross income is thereby increased to \$1,935.
5. The community spouse filed an appeal with the Division of Hearings & Appeals on May 1, 2001, seeking an increase in his community spouse income allocation above the standard maximum allocation alleging that his net income is insufficient to meet his basic monthly maintenance needs.
6. The community spouse's basic monthly expenses, based upon Exhibit #5 and his testimony, are listed in the following table:

Expense	Amount
Trailer Payment (incl. property taxes)	\$200.00
Telephone Bill	\$ 40.00
Gas & Electric Bill (Average of Jan – April 2001)	\$132.00
Auto Insurance	\$ 44.09
Gas for Auto	\$107.50
Mobile Home Lot Fee (Garbage, Water & Sewer)	\$196.48
Groceries	\$107.50
House Insurance (Pro-rata)	\$ 15.16
Trailer Roof Maintenance Contract (Pro-Rata)	\$ 8.33
Uncovered Medical Prescriptions	\$ 25.00
Past Medical Bills (Payments Being Made)	\$200.00
Dining Out of Home – Work Days (\$12 per day x 5 days per week x 4.3 weeks per month.)	\$258.00
TOTAL:	<u>\$1,334.16</u>

In addition, he reported that his entertainment expenses were Cable television service at \$42.18 per month, and the cost of 5 or 6 beers at night; that he had unspecified cat litter, food, and veterinary service costs; and that he would be getting an attorney's bill in the future for the cost of his wife's Chapter 51 commitment action.

DISCUSSION

Effective January 1, 2001, the "Community Spouse Income Allocation" was changed to the *lesser* of \$2,175.00 per month, or \$1,935 plus the amount of shelter expenses incurred each month by the community spouse which exceeded \$580.50, known as the "excess shelter allowance". See, MA Handbook, App. 23.6.0(04-01-01).

Shelter expenses include rent, mortgage principal and interest, property taxes, insurance, "standardized" utility expenses [heat & *all* utilities, deemed at the Food Stamps standard utility allowance level of \$201] and allowed maintenance expenses for a condominium or cooperative. The allowable shelter expenses here

were determined by the agency to be less than the excess limit; and they appear to total \$416.16. The community spouse asserts that he also pays \$196.48 per month as a lot fee for his trailer that includes garbage removal and water & sewer utility costs. If that amount is fully counted as shelter expense, he *would* exceed the shelter allowance and the maximum allocation could be increased to account for that excess.

This fact pattern presents some unusual circumstances. The property tax falls within the mortgage payment for the trailer itself. The “lot rent” includes trailer home lot rent, sewer, water, and garbage removal, but not telephone, heat or electric utilities expenses, which the community spouse pays independently. The “standard utility” normally encompasses all utilities in the general standard of \$201. I conclude that the most accurate way to view this situation in determining his shelter expense is to count his actual trailer mortgage payment (\$200), plus home insurance pro-rated (\$15.16), plus the SUA (\$201), plus a discounted portion of the lot rent (\$160), i.e., reducing the lot rent by an estimate of the water and sewage utility costs that are already covered under the standard utility allowance. These sums total \$576.16. Therefore the petitioner's spouse has no *excess* shelter expenses above the \$580.50 threshold, as determined under the program guidelines. See, MA Handbook, App. 23.6.0. (04-01-01). The applicable maximal spousal income allocation is the base rate of \$1,935 per month, as determined by the county agency.

That being said, the county agency correctly allocated to the community spouse the difference between his monthly income (\$1,901.83) and the maximum spousal income allocation (\$1,935), i.e., an allocation of \$33.17.

However, hearing examiners have the authority to increase the community spouse income allocation where income is insufficient to meet the recipient's spouse's basic maintenance needs. WI Stat § 49.455(8)(c); WI Admin Code § HFS 103.075(8)(c); MA Handbook, Appendix 23.6.0., Section “A”.

The community spouse asserts that he needs more of his wife's income, as well his own income, to meet his necessary and basic maintenance needs.

An increase in the allowance can be made by the Fair Hearing process only if it is established that the community spouse needs income above the level provided by the allowance due to the existence of exceptional circumstances resulting in financial duress for the community spouse. WI Stat § 49.455(8)(c); WI Admin Code § HSS 103.075(8)(c). The term “exceptional circumstances resulting in financial duress” means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. WI Admin Code § HFS 103.075(8)(c); see also, MA Handbook, Appendix 23.6.0, Section “A”.

The petitioner asserts that his after tax income is insufficient to meet his monthly expenses, and that he has unusual expenses in the form of his wife’s outstanding medical bills from before institutionalization that were not covered by MA, and soon to be received legal bills related to a past commitment action concerning his wife.

First, I do not view the pet-related expenses as necessary and basic maintenance of the community spouse. In any event, such expenses were not stated. They are also, generally speaking, minimal for a cat. Likewise, the entertainment expense for beer, also unstated, is a luxury item, not a “basic” maintenance expense. It is will not be allowed as such. Thirdly, I cannot allow the cable television expense either. Television is available for free. Cable television is not a basic and necessary maintenance expense where a free alternative is available.

As to the stated expenses, I note that I have allowed the maximum estimated expenses asserted for the trailer payment, as the community spouse asserts he actually pays \$200 per month and not the contract required amount of \$175.57. I have also allowed the modest dining expenses asserted based upon \$12 per day, for all

work-days, as well as his general grocery estimate (\$107.50). Given that the community spouse works full-time in physical labor every day and has no one to prepare him dinner at home, this amount is not outrageous, and seems to me to be a basic expense. In all other respects, his budget is very modest, and when adjusted for a monthly sum, I conclude that his basic monthly maintenance expense is \$1,334.16. See, Finding #6.

After addition of the \$33.17 currently allocated to him, his gross income of \$1,935 greatly exceeds his basic monthly maintenance expense. The community spouse argues that he cannot meet these expenses on his take-home pay. Assuming arguendo, a 33% combined federal-state-social security tax rate ($\$1,935 \times 33\% = \639), his take-home pay can be estimated to be approximately ($\$1,935 - \$639 = \$1,296$.) He is still short of the amount he needs to survive. I conclude that he is in a state of economic duress, and his present **maximum allocation must be raised** by the difference between his allowable maintenance expenses and his estimated net income ($\$1334.16 - \$1,296 = \$38.16$), i.e., by \$38.16, to **\$1,973.16** to avoid financial duress.

An exceptional circumstance is present because (petitioner's spouse) is paying for a modest mortgage, has a monthly lot rent, has substantial medical expenses related to his wife's care that he is actually paying, has a car payment, and pays income taxes due to his employment. See WI Stat § 49.455(8)(c). I note that the community spouse testified that he expects to incur a large legal bill in the future. I cannot account for that expense now because it has not been incurred and he is not actually paying it yet. If and when the expense is incurred, he may request another increase in the income allotment.

CONCLUSIONS OF LAW

That the petitioner's basis monthly maintenance needs require that his maximum community spouse income allocation be increased to \$1,973.16, as he is under financial duress.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the county agency with instructions to increase the petitioner's maximum community spouse income allocation to \$1,973.16 effective with the June 1, 2001, cost of care liability determination. This action shall be taken within 10 days of the date of this Decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals
79/KDD

cc: Shirley Ross
Susan Wood